

1 **REMARKS:**

2 In the non-final Office Action, the Examiner noted that claims 1-27 are pending in the
3 application, that claims 1 through 15, 18 through 20, and 23 through 25 are rejected, and claims
4 16, 17, 21, 22, 26, and 27 are objected to. The Examiner notes that claims 16, 17, 21, 22, 26 and
5 27 would be allowable if rewritten to overcome the rejection of a base claim. For the reasons
6 discussed below, Applicant respectfully submits that claims 1 through 27, including claims 2, 7,
7 13, 18 and 23 as amended herein, are in condition for allowance.

8 **I.**

9 **Claim Objections**

10 The Examiner objected to claims 2 and 7 because of the following informalities: the “,” at
11 the end of the claim should be changed to a - - - -. The requested change is reflected in the
12 amendments to claims 2 and 7 above.

13 **II.**

14 **Claim Rejections - 35 USC § 102**

15 **A. Claims 13 Through 15 - Summary of Examiner's Grounds for Rejection**

16 The Examiner rejected claims 13 through 15 under 35 U.S.C. 102(b) as being anticipated
17 by Studer (US 4,232,506). In paragraph 5, the Examiner asserts, in essence, that Studer discloses
18 a harvester having all of the elements claimed within claims 13 through 15.

19 **B. Applicants' Reply to Examiner's Rejections**

20 In response to the Examiner's rejection, Applicant responds that the Federal Circuit has
21 stated that “anticipation requires the presence in a single prior art reference disclosure of each and
22 every element of the claimed invention *arranged as in the claim.*” *Lindermann Maschinenfabrik*
23 *GMBH v. American Hoist and Derrick* (Fed. Cir. 1984) 221 USPQ 481, 485 (emphasis added). In
24 *Lindermann*, the Federal Circuit found that the trial court had erred in treating the claims of the
25 prior art reference “as mere catalogs of separate parts in disregard of the part-to-part relationships
26 set forth in the claims and that give the claims their meaning.”

27 In this case, the Examiner's rejection of claims 13 through 15 does not consider that the

1 arrangement of the elements as set forth in those claims is not anticipated by Studer. Specifically,
2 as shown in Figures 15 and 16, Studer discloses that the first second hydraulic motor (61;161) and
3 the second hydraulic motor (46; 163) are each attached on the same side of the weight housing
4 (150). There is not disclosure made anywhere within Studen, either within the specification or
5 the drawings, in which the two motors are on opposite sides of the weight housing as disclosed
6 and claimed by the Applicant.

7 Claim 13 of the Application, paragraph (b) provides the following arrangement of the
8 elements:

9 a drum assembly disposed within the drum housing, the drum assembly
10 comprising: (i) a drum *having a first end and a second end . . . a first shaft*
11 *extending through the drum . . . a first weight housing adjacent and coupled to the*
12 *first end, the first shaft extending through the first weight housing . . . a second*
weight housing adjacent and coupled to the second end . . . a first hydraulic motor
coupled to the first shaft and . . . a second hydraulic motor for rotating the drum
connected to the second weight housing [emphasis added]

13 The italicized elements from claim 13 are not arranged in any manner disclosed by Studer.
14 The different arrangement of the motors as claimed in the Application has functional implications
15 which distinguish the Applicant's invention from that of Studer. As disclosed within the
16 application, "for the harvester disclosed in the '506 patent [Studer] both the first and second
17 motor are mounted to the the outside of the torsion spring, on the same side of the drum, thereby
18 requiring removal of both motors to replace the spring." (Page 4, lines 18-20). As shown in
19 Figures 10 and 12 of the Application, and as claimed in claims 13 through 15, the first motor 76
20 and the second motor 88 are on opposite sides of drum 64, overcoming the maintenance
21 disadvantage identified within Studer.

22 In addition, Applicant has amended claim 13 to add limitations to the spring coupling
23 which are not present within Studer. The Examiner states that, among other things, Studer
24 discloses "a second hydraulic motor (46) for rotating the drum connected to the second weight
25 housing (150) with a spring coupling (165) comprising a *plurality of springs* disposed between
26 two plates (unnumbered). . ." (Emphasis added). Studer actually only discloses a single spring,
27 describing this portion of his invention as follows:

1 A second motor 163 may be mounted around but not coupled to the shaft 156 and
2 has a hollow shaft 164. A torsion spring 165 is mounted around the shaft 156 but
3 not coupled to it; one end of the spring 165 is secured to the hollow shaft 164, and
4 its other end is secured to a vibrator frame 166. The vibrator frame 166 is secured
5 to the hub 155 to which the disk 150, 151, etc., are all secured. In place of the
6 torsion spring 165 a hydraulic spring like that of FIG. 6 may be used.

7 Col. 10; lines 12-20.

8 Studer therefore discloses a single spring which is mounted around the shaft 156.

9 However, the present amendment of claim 13 adds the further limitation that the springs are not
10 around the shaft, but on either side of the shaft:

11 a second hydraulic motor for rotating the drum connected to the second weight
12 housing with a spring coupling, the spring coupling comprising a plurality of
13 springs disposed between two end plates, the end plates on either side of a center
14 plate which supports the first shaft

15 The Application provides antecedent basis for the limitation added by the amendment at
16 page 12, lines 18-24.

17 III.

18 Claim Rejections - 35 USC § 103

19 A. Claims 1 and 6 - Summary of Examiner's Grounds for Rejection

20 In paragraphs 7 through 9, the Examiner rejected claims 1 and 6 under 35 U.S.C. 103 as
21 being obvious.

22 With respect to claims 1 and 6, the Examiner states these claims are unpatentable over
23 Cetrulo (United States Patent No. 3,921,375) in view of Hobbs (United States Patent No.
24 4,184,314). The Examiner asserts it would have been obvious to one having ordinary skill in the
25 art to have included the folding conveyor of Hobbs on the harvester of Cetrulo in order to move
26 the conveyors to an operative position for storage and transportation.

27 B. Applicant's Reply to Examiner's Rejection of Claims 1 and 6 - The Examiner Has Failed to Establish a Prima Facie Case of Obviousness

Pursuant to MPEP 2143, the Examiner must show the following to establish a prima facie
case of obviousness: (1) "there must be some suggestion or motivation, either in the references
themselves or in the knowledge generally available to one of ordinary skill in the art, to modify

1 the reference or to combine reference teachings”; (2) “there must be a reasonable expectation of
2 success”; and (3) “the prior art reference (or references when combined) must teach or suggest all
3 the claim limitations.” The modification or combination of the prior art by the Examiner to reject
4 claims as *prima facie* obvious is proper “as long as there is a reasonable expectation of success.”
5 MPEP 2143.02.

6 In this case, without considering the other elements of a *prima facie* case for obviousness,
7 the second element is not satisfied with respect to claims 1 and 6. Notwithstanding the assertions
8 of the Examiner, it is not possible to combine the folding conveyor of Hobbs with the harvester of
9 Cetrulo, without substantial reconstruction or redesign of the harvester of Cetrulo. However, the
10 suggestion to combine the references must not require substantial reconstruction or redesign of the
11 references to arrive at the claimed invention. As stated within MPEP 2143.01: “If the proposed
12 modification or combination of the prior art would change the principle of operation of the prior
13 art invention being modified, then the teachings of the references are not sufficient to render the
14 claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959.”

15 As stated within the Declaration of Greg Brannstrom, which is enclosed herewith,
16 Cetrulo’s harvester has an upper conveyor 150 in spaced relation to lower conveyor 74, spaced
17 such that tomato vines are transferred by being sandwiched between the two conveyors.
18 (Brannstrom Decl. § 7). However, the outrigger conveyors of Hobbs are able to pivot from a
19 first position with the outriggers in the same relative position as the central conveyor B to a
20 second position with the outriggers at approximately a right angle to the central conveyor
21 “because there is no structure above either of the conveyors to prevent” such pivoting of the
22 conveyors. (Brannstrom Decl. § 8). Quite simply, the lower conveyors 74 of Cetrulo cannot be
23 made to pivot in the same manner as the conveyors of Hobbs, because such pivoting would be
24 prevented by upper conveyor 150, which directly and immediately overlies the lower conveyors.
25 Cetrulo would have to be substantially reconstructed or redesigned to make the modification or
26 combination suggested by the Examiner.

1 **C. Claims 2, 3, 7 and 8 - Summary of Examiner's Grounds for Rejection**

2 In paragraph 10, the Examiner rejected claims 2, 3, 7 and 8 under 35 U.S.C. 103 as being
3 obvious. The Examiner states these claims are unpatentable over Cetrulo (United States Patent
4 No. 3,921,375) in view of Hobbs (United States Patent No. 4,184,314) as applied to claims 1 and
5 6 above, and in further view of Gilbert (United States Patent No. 3,581,484), which discloses a
6 harvester utilizes rods connected by a belt. The Examiner concludes that it would have been
7 obvious to one having ordinary skill in the art at the time the invention was made to include the
8 rods of Gilbert on the harvester of Cetrulo and Hobbs in order to aid in lifting.

9 **D. Applicant's Reply to Examiner's Rejection of Claims 2, 3, 7 and 8 - The Examiner**
10 **Has Failed to Establish a Prima Facie Case of Obviousness for the Underlying Base**
11 **Claims**

12 For the reasons stated above, Applicant respectfully submits that the Examiner has not
13 established a prima facie case of obviousness for the respective underlying base claims for the
14 rejected claims, i.e., independent claim 1 for dependent claims 2 and 3 and independent claim 6
15 for dependent claims 7 and 8.

16 **E. Claims 4, 5, and 9-12 - Summary of Examiner's Grounds for Rejection**

17 In paragraph 11, the Examiner rejected claims 4, 5, and 9-12 under 35 U.S.C. 103 as being
18 obvious. The Examiner states these claims are unpatentable over Cetrulo (United States Patent
19 No. 3,921,375) in view of Hobbs (United States Patent No. 4,184,314) as applied to claims 1 and
20 6 above, and in further view of Carpenter (United States Patent No. 2,065,169). Pertinent to claim
21 4, Carpenter discloses a harvester utilizing a lower cross-conveyors transversely mounted at the
22 top end of the outrigger conveyor. Pertinent to claims 5, 11 and 12, Carpenter discloses an
23 intermediate endless loop conveyor approximately parallel to the center of the harvester, where
24 the intermediate conveyor receives crops and vines from the cross conveyor. Pertinent to claims
25 9 and 10, Carpenter discloses a lower right cross-conveyor and a lower left cross-conveyor. The
26 Examiner concludes it would have been obvious to one having ordinary skill in the art at the time
27 the invention was made to include the cross-conveyors of Carpenter on the harvester of Cetrulo
 and Hobbs in order to deliver crops transversely.

1 **F. Applicant's Reply to Examiner's Rejection of Claims 4, 5, 9 - 12 - The Examiner Has**
2 **Failed to Establish a Prima Facie Case of Obviousness for the Underlying Base**
3 **Claims**

4 For the reasons stated above, Applicant respectfully submits that the Examiner has not
5 established a prima facie case of obviousness for the respective underlying base claims for the
6 rejected claims, i.e., independent claim 1 for dependent claims 4 and 5 and independent claim 6
7 for dependent claims 9 and 12.

8 **G. Claims 18-20 - Summary of Examiner's Grounds for Rejection**

9 In paragraph 12, the Examiner rejected claims 18-20 under 35 U.S.C. 103 as being
10 obvious. The Examiner states these claims are unpatentable over Studer (United States Patent No.
11 4,232,506) in view of Cetrulo (United States Patent No. 3,921,375). The Examiner states that it
12 would have been obvious to one having ordinary skill in the art at the time the invention was
13 made to include the conveyors of Cetrulo on the harvester of Studer in order to widen the pickup
14 area.

15 **H. Applicant's Reply to Examiner's Rejection of Claims 18-20 - The Amendment of**
16 **Claim 18 Includes a Limitation Not Anticipated by Studer and Cetrulo**

17 Applicant has amended claim 18 to add limitations to the spring coupling which are not
18 present within Studer or Cetrulo. The Examiner states in paragraph 12 that, among other things,
19 Studer discloses "a second hydraulic motor (46) for rotating the drum connected to the second
20 weight housing (150) with a spring coupling (165) comprising a *plurality of springs* disposed
21 between two plates (unnumbered). . ." (Emphasis added). Studer actually only discloses a single
22 spring, describing this portion of his invention as follows:

23 A second motor 163 may be mounted around but not coupled to the shaft 156 and
24 has a hollow shaft 164. A torsion spring 165 is mounted around the shaft 156 but
25 not coupled to it; one end of the spring 165 is secured to the hollow shaft 164, and
26 its other end is secured to a vibrator frame 166. The vibrator frame 166 is secured
27 to the hub 155 to which the disk 150, 151, etc., are all secured. In place of the
torsion spring 165 a hydraulic spring like that of FIG. 6 may be used.

Col. 10; lines 12-20.

Studer therefore discloses a single spring which is mounted around the shaft 156.

However, the the present amendment of claim 18 adds the further limitation that the springs are

1 not around the shaft, but on either side of the shaft:

2 a second hydraulic motor for rotating the drum connected to the second weight
3 housing with a spring coupling, the spring coupling comprising a plurality of
4 springs disposed between two end plates the end plates on either side of a center
5 plate which supports the first shaft

6 The Application provides antecedent basis for the the limitation added by the amendment
7 at page 12, lines 18-24.

8 The amendment of the underlying base claim 18 similarly limits claims 19-20.

9 **I. Claims 23-25 - Summary of Examiner's Grounds for Rejection**

10 In paragraph 13, the Examiner rejected claims 23-25 under 35 U.S.C. 103 as being
11 obvious. The Examiner states these claims are unpatentable over Studer (United States Patent No.
12 4,232,506) in view of Hobbs (United States Patent No. 4,184,314). The Examiner states that it
13 would have been obvious to one having ordinary skill in the art at the time the invention was
14 made to include the folding conveyors of Hobbs on the harvester of Studer in order to move the
15 conveyors to an inoperative position for storage and transportation.

16 **J. Applicant's Reply to Examiner's Rejection of Claims 23-25 - The Amendment of
17 Claim 23 Includes a Limitation Not Anticipated by Studer and Hobbs**

18 Applicant has amended claim 23 to add limitations to the spring coupling which are not
19 present within Studer or Hobbs. The Examiner states in paragraph 14 that, among other things,
20 Studer discloses "a second hydraulic motor (46) for rotating the drum connected to the second
21 weight housing (150) with a spring coupling (165) comprising a *plurality of springs* disposed
22 between two plates (unnumbered). . ." (Emphasis added). Studer actually only discloses a single
23 spring, describing this portion of his invention as follows:

24 A second motor 163 may be mounted around but not coupled to the shaft 156 and
25 has a hollow shaft 164. A torsion spring 165 is mounted around the shaft 156 but
26 not coupled to it; one end of the spring 165 is secured to the hollow shaft 164, and
27 its other end is secured to a vibrator frame 166. The vibrator frame 166 is secured
to the hub 155 to which the disk 150, 151, etc., are all secured. In place of the
torsion spring 165 a hydraulic spring like that of FIG. 6 may be used.

Col. 10; lines 12-20.

Studer therefore discloses a single spring which is mounted around the shaft 156.

1 However, the the present amendment of claim 23 adds the further limitation that the springs are
2 not around the shaft, but on either side of the shaft:

3 a second hydraulic motor for rotating the drum connected to the second weight
4 housing with a spring coupling, the spring coupling comprising a plurality of
5 springs disposed between two end plates the end plates on either side of a center
6 plate which supports the first shaft

7 The Application provides antecedent basis for the the limitation added by the amendment
8 at page 12, lines 18-24.

9 The amendment of the underlying base claim 23 similarly limits claims 24-25.

10 **K. Allowable Subject Matter - Claims 16, 17, 21, 22, 26 and 27**

11 The Examiner states in paragraph 15 that claims 16, 17, 21, 22, 26 and 27 are objected to
12 as being dependent upon a rejected base claim but would be allowable if rewritten in independent
13 form including all of the limitations of the base claim and any intervening claims. Applicant
14 respectfully submits that the amendments of the underlying base claims (claims 13, 18 and 23)
15 overcome the Examiner's rejections of those claims, such that the claims dependent on the base
16 claims, including those listed above, are allowable without further modification.


17 **IV**

18 **Conclusion**

19 Applicant respectfully submits that this submission is fully responsive to the April 21,
20 2004 Office Action, and these claims are in condition for allowance. The issuance of a Notice of
21 Allowance at an early date is therefore requested.

22 If the Examiner believes a telephone conference would expedite prosecution of this
23 application, please telephone the undersigned at (661)395-1000.

24 Respectfully submitted,

25
26 By 
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